

NOTICE

Memorandum decisions of this Court do not create legal precedent. See Alaska Appellate Rule 214(d) and Paragraph 7 of the Guidelines for Publication of Court of Appeals Decisions (Court of Appeals Order No. 3). Accordingly, this memorandum decision may not be cited as binding authority for any proposition of law.

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

JOSHUA ALAN WADE,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-12006
Trial Court No. 3AN-11-6794 CI

MEMORANDUM OPINION

No. 6779 — March 13, 2019

Appeal from the Superior Court, Third Judicial District,
Anchorage, Philip R. Volland, Judge.

Appearances: Douglas O. Moody, Assistant Public Defender,
and Quinlan Steiner, Public Defender, Anchorage, for the
Appellant. Diane L. Wendlandt, Assistant Attorney General,
Office of Criminal Appeals, Anchorage, and Jahna Lindemuth,
Attorney General, Juneau, for the Appellee.

Before: Mannheimer, Chief Judge, and Allard, Judge.

Judge MANNHEIMER.

Joshua Alan Wade appeals the dismissal of his petition for post-conviction relief. The superior court dismissed the petition as moot before the petition was fully litigated, because the court concluded that Wade had already received the relief he sought.

On appeal, Wade contends that the superior court misunderstood the relief he was seeking, and that his petition was not moot. For the reasons explained in this opinion, we conclude that Wade has failed to show that the superior court was mistaken about this matter. We therefore affirm the superior court’s decision.

Underlying facts

In 2007, Joshua Alan Wade was charged with federal criminal offenses stemming from his killing of Mindy Schloss. Three years later, the State of Alaska charged Wade with first-degree murder stemming from the same homicide. Wade ultimately resolved these charges by reaching plea agreements with both the federal and state governments.

In his federal case, Wade pleaded guilty to carjacking resulting in death, 18 U.S.C. § 2119(3), and he agreed to receive a life sentence with no possibility of parole. Under the terms of Wade’s plea agreement, this federal sentence was consecutive to whatever sentence Wade might receive in the parallel state prosecution.

In the state case, Wade pleaded guilty to first-degree murder, and he ultimately was sentenced to 99 years’ imprisonment without parole. Wade’s plea agreement with the State contained a clause in which Wade acknowledged that the State of Alaska was not making “any representation, promise, or agreement regarding the [prison] facility” at which Wade might serve his sentence.

Approximately one year after these charges were resolved, Wade filed a petition for post-conviction relief in state court. In his petition, Wade claimed that he had accepted the plea agreements only because state officials assured him that he would not serve his state sentence in an Alaska prison. Wade explained that he was currently being housed at an Alaska prison — Spring Creek Correctional Center, near Seward —

and that, because his crimes were too “high profile”, the Department of Corrections kept him in solitary confinement rather than risking his safety in the general prison population.

Wade conceded that his plea agreement with the State contained the provision that we described two paragraphs earlier: the provision in which Wade acknowledged that the State was not making any promise regarding the prison facility where Wade would serve his sentence. Nevertheless, Wade claimed that state officials had assured him that he would not be housed in Alaska — and Wade asserted that he would not have accepted the state plea agreement if he had known that he would be placed in an Alaska prison.

The superior court appointed the Public Defender Agency to represent Wade in his post-conviction relief litigation. Assistant Public Defender David Seid entered an appearance for Wade and filed an amended petition for post-conviction relief. This amended petition asserted that “it was Mr. Wade’s intent to serve [his] state sentence in a facility outside of Alaska” — and that, even though “the [Alaska] Department of Corrections would not commit to an agreement in writing”, it was nevertheless Wade’s “understanding” that, after he was remanded to state custody, he would serve his state sentence “outside of Alaska”. Wade contended that the State of Alaska had broken this unwritten agreement by placing him at Spring Creek, with no plans to transfer him to an out-of-state facility.

Based on these assertions, Wade asked the superior court “to either order the Department of Corrections to ... send [him] to an out-of-state facility to serve his state sentence or, in the alternative, to allow Mr. Wade to withdraw his guilty plea [to the state murder charge].”

Wade later supported this amended petition with his personal affidavit. In his affidavit, Wade detailed his version of the plea negotiations. At the conclusion of this

affidavit, Wade reiterated his request that he “either be allowed to withdraw [his] guilty plea in state court and be placed back into federal custody”, or that the Department of Corrections “be ordered ... to follow through [with its asserted promise] and send [him] to an out-of-state prison, never to be returned to Alaska.”

The superior court concluded that an evidentiary hearing or trial was necessary to resolve Wade’s claim, so the court scheduled a trial for July 8, 2013. Three weeks before that date, Superior Court Judge Phillip R. Volland held a calendar call in Wade’s case to make sure the parties were ready for trial. The judge was unable to reach Wade’s attorney, but the prosecutor told the judge that he had been in contact with Wade’s attorney, and that both attorneys expected the case to be resolved short of trial. The court later vacated the July 8, 2013 trial date.

Approximately six months later — on January 31, 2014 — the prosecutor and Wade’s attorney appeared in court to announce a tentative resolution of the case. The prosecutor informed Judge Volland that the Department of Corrections had arranged for Wade to be transferred to a federal prison outside of Alaska to serve his sentence — but that this transfer had not yet been accomplished, due to unexpected logistical problems. The prosecutor told Judge Volland that, once these problems were resolved and Wade was transferred to a federal prison, it was the prosecutor’s understanding that “Mr. Wade will either withdraw his application, or dismiss it — however you want to characterize that.”

After hearing the prosecutor’s explanation of the situation, Judge Volland asked Wade’s attorney if this was his understanding as well. In response, Wade’s attorney suggested that Judge Volland set another status hearing. The defense attorney told the judge, “There’s some other things that we need to do, but I think — I’m semi-confident that we can take care of that if the transport order is going to go through.”

Based on the defense attorney's request, Judge Volland set Wade's case for another status conference. This status conference took place on April 14, 2014. At that time, the prosecutor announced that Wade had, in fact, been transferred to a federal prison in Indiana — and that Wade had therefore received the relief he had requested. But when Judge Volland asked the defense attorney if he would stipulate to the dismissal of Wade's petition, the defense attorney refused to do this until he could independently verify that Wade had indeed arrived at the federal prison:

Defense Attorney: If there is some confirmation that Wade is in his final destination, that he's ... truly in federal custody, [then] the court can make the finding that it wants to make, I suppose. My discomfort is just [that] I haven't heard from Mr. Wade in a while, and I just don't — I don't have that final confirmation.

Judge Volland then stated his understanding (based on what the attorneys had told him) that, once Wade was transferred to a federal prison, this transfer to federal custody would give Wade the relief that he sought. However, because Wade's attorney had expressed uncertainty as to whether a transfer to federal prison had actually taken place, Judge Volland told the attorneys that he would wait 30 days before signing an order dismissing Wade's petition. Judge Volland told Wade's attorney that if there was some reason why Wade's petition should *not* be dismissed, the onus was on the defense attorney to file a pleading within the next 30 days, explaining why the case should remain open.

Judge Volland waited the 30 days — in fact, he waited 57 days — but no further pleading was filed. Judge Volland then issued an order dismissing Wade's petition for post-conviction relief as moot.

Wade's claim on appeal, and why we reject it

In this appeal, Wade contends that Judge Volland was “clearly mistaken” in believing that Wade’s petition would be moot — *i.e.*, that Wade would receive the relief he was asking for — when Wade was transferred to a federal prison outside of Alaska. More specifically, Wade contends that, in his petition, he clearly asked to be transferred to a *state* prison outside of Alaska.

The record fails to support Wade’s contention. As we have explained, Wade’s amended petition for post-conviction relief (the one drafted by Wade’s defense attorney), as well as the affidavit that Wade submitted in support of that amended petition, both ended with the same prayer for relief: Wade asked the court to either order the State to transfer him to a prison outside of Alaska to serve his state sentence, or else allow Wade to withdraw his plea.

It is true that, in the first paragraph of Wade’s supporting affidavit, he referred to his efforts to be placed in “a non-Alaska state prison system”. But this reference was made in passing. Wade’s purported desire to be placed in a *state* prison outside of Alaska — as opposed to a *federal* prison outside of Alaska — was never reiterated in Wade’s prayers for relief, nor was it ever mentioned by Wade’s attorney in any of the proceedings before Judge Volland.

Moreover, at an earlier status hearing in Wade’s case, Wade himself told the Court, “I just want to get out of solitary confinement. I don’t care where I go.”

We note that, at the final court hearing on April 14, 2014, Judge Volland told the attorneys that he understood Wade to be seeking a transfer to federal prison, and that Wade’s concerns would be met if that transfer occurred. Wade’s attorney never told Judge Volland that his understanding of the case was wrong. Instead, the defense attorney told Judge Volland that it would be *premature* to dismiss Wade’s petition,

because the defense attorney was still not sure whether Wade's transfer to federal custody had actually taken place. In response, Judge Volland expressly told Wade's attorney that he had 30 days to notify the court if there was some reason not to dismiss Wade's petition as moot. And as we have explained, the defense attorney did not file anything.

Given this record, Judge Volland was not clearly mistaken when he concluded that Wade had received the relief he was seeking when the Department of Corrections transferred Wade to a federal prison outside of Alaska.

Furthermore, we reject Wade's alternative argument that the situation in his case is analogous to the situation where a defense attorney files a certificate of no merit under Alaska Criminal Rule 35.1(e)(2). Wade's attorney never told the court that there was no arguable merit to Wade's claim for post-conviction relief. Instead, both the prosecutor and the defense attorney essentially told the court that *it did not matter* whether Wade's claim had merit — because, meritorious or not, the State was willing to grant Wade the relief he sought.

The superior court did not dismiss Wade's petition for post-conviction relief based on the conclusion that the petition had no arguable merit. Rather, the court dismissed Wade's petition as *moot*, based on the court's conclusion that there was no need to litigate the petition any further, since Wade had already received the relief he requested.

We accordingly AFFIRM the judgement of the superior court.